IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5076 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DILIP @ MANSUKH SON OF PARSOTTAMBHAI @ HASMUKH @

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5076 of 2005

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS HB PUNANI, AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 15/04/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the order passed against his by Police Commissioner, Rajkot City, on 27th February, 2005, in exercise of powers

conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 27th February, 2005 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at the subjective satisfaction. Firstly, the detaining authority took into consideration six criminal cases registered against the petitioner for the breach of the Bombay Prohibition Act, and secondly the detaining authority took into consideration two in-camera statements of witnesses, as recorded by the sponsoring authority on 24th February, 2005 and as verified by the detaining authority on 25th February, 2005, and the identity of the witnesses were not disclosed by the detaining authority, claiming privilege under Section 9(2) of the PASA Act.

3. Out of six crimes registered against the petitioner, first three crimes were registered before Prohibition Police Station, Rajkot on 13th January, 2003, 17th May, 2003 and 30th March, 2004. In first case, the petitioner was found in possession of 13 bottles of prohibited foreign liquor, in second case also, he was found in possession of 12 bottles of prohibited foreign liquor and in third case also, he was found in possession of 17 bottles of foreign liquor. The remaining three cases filed before "B" Division Police Station, Rajkot on 18th July, 2004, 27th July, 2004 and 11th February, 2005. In fourth case, the petitioner was found in possession of two bottles of prohibited foreign liquor, in fifth case, he was found in possession of 12 bottles of prohibited foreign liquor and in sixth case, he was found in possession of 20 bottles of prohibited foreign liquor. The detaining authority considered exhaustively and thoroughly investigation papers in all six cases registered against the petitioner.

4. Out of two incamera statements, the first witness referred to an incident of 23rd December, 2004. On that day, the petitioner was present at his place of business and at about 10.00 a.m., the petitioner and his two accomplices approached the witness on one maruti car loaded with the crates of prohibited foreign liquor. The witness was told by the petitioner that the police was apprehending him and, therefore, the witness should conceal the crates of prohibited foreign liquor in the back of the cabin owned by the witness and till evening

the customers might take away the said liquor, the witness refused the offer of the petitioner. Thereupon, the petitioner was excited and started abusing the witness. The witness stated that if the petitioner continued his bullying tactics, he would be constrained to file a complaint before the police. Thereupon, the petitioner started beating the witness and threatened him with a knife and stated that if the witness dared to file any complaint against him before the police, he would be done to death. Though the incident attracted a crowd, but on account of fear and terror of the petitioner none intervene. On the contrary, the petitioner and his accomplices, rushed towards the crowd with open knives and public order was disturbed in the area. The second witness referred to an incident occurred on 9th January, 2005. On that day, the witness was present at his business place at 7.00 p.m. and was approached by the petitioner and his one accomplice in one auto-rickshaw loaded with the crates of prohibited foreign liquor and they started selling the said liquor near the business place of the witness. The witness requested the petitioner not to sell prohibited liquor near his business place. Thereupon, the petitioner was excited and started abusing the witness, the witness stated that if, the petitioner employed bullying tactics, he would be constrained to file a complaint against him, before the police. Thereupon, the petitioner and his accomplices both were further excited and started beating the witness and after taking out knife threatened the witness that if the witness dared to file a complaint against him before the police, he would be done to death. The incident attracted a crowd but none intervene on account of fear of the petitioner, on the contrary, to strick terror, the petitioner speaking abuses with open knife rushed towards the crowd, so the people started running helter-skelter and atmosphere of terror was created in the area and public order was disturbed.

5. Relying upon the above materials, the detaining authority came to the conclusion that the petitioner was engaged in storing, selling and transporting prohibited liquor and was a bootlegger within the meaning of the PASA Act. The detaining authority also concluded that the petitioner was in habit of administering threats to innocent citizens and to beat them in executing his bootlegging activities. The detaining authority came to the conclusion that bootlegging activities of the petitioner were prejudicial to the maintenance of the public order and were adversely affected the public health. The detaining authority came to the conclusion that the bootlegging activities of the petitioner were

required to be prevented forthwith and, therefore, after considering the remedies available against the petitioner under the general law, the detaining authority reached to the subjective satisfaction that there was no other alternative, except to detain the petitioner under the PASA Act. The detaining authority, therefore, passed an order of detention, as aforesaid, which is under challenge in this petition.

6. Learned advocate Mr.M.R.Prajapati for the petitioner and learned AGP Ms.H.B.Punani for the respondents were heard at length.

6. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of only on the issue that whether there was credible and cogent material placed before the detaining authority to come to the conclusion that by the activities of the petitioner, the public order was disturbed and public health was adversely affected.

7. To reach to the subjective satisfaction that bootlegging activities of the petitioner were prejudicial to the maintenance of public order and public health, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. While undertaking this exercise, the detaining authority has to draw a clear line between the cases falling within the category of breach of law and order and the cases falling within the category of breach of public order.

8. Referring to the six criminal cases filed against the petitioner under the Bombay Prohibition Act for the possession of prohibited liquor, and going through the investigation papers as placed on record, it is found that those six cases came to be filed against the detenu because he was dealing in prohibited liquor. The possession of prohibited liquor is a breach under the Bombay Prohibition Act and hence cases came to be filed. However, merely filing cases under the Bombay Prohibition Act would not result in a conclusion that the activities of the petitioner were disturbing the public order or was affecting adversely to the public health. At the most, the petitioner might have committed breach of the provisions of law, for which the petitioner may be tried

and punished if found guilty, but surely the act constituting the offence in dealing in prohibited liquor cannot be said to have affected the even tempo of the life of the community nor the activities revealed through the investigating papers indicate that in the activities alleged through these cases, society at large or section of the society or community or particular community was involved. Therefore, these cases may be instances of breach of law and order, but cannot be branded as activities disturbing the public order or affecting the public health.

9. Further while referring to the in-camera statements, as recorded by the sponsoring authority and verified by the detaining authority, it must be borne in mind that while reaching to the subjective satisfaction about the alleged activities of the petitioner, it would be necessary for the detaining authority to consider fall out, reach and impact of the activities of the petitioner and thereafter to come to the conclusion that such activities were capable of disturbing the public order. Two incidents, as narrated through in-camera statements, reveal individual disputes than to involve society at large or even disturbing the even tempo of the life of the community. The potentiality of the act alleged through in-camera statements, even from the bare reading of them, are not capable to be branded as to the activities disturbing the even tempo of life of the community or society at large or section of the society. No widespread danger or harm to the society could be inferred from the statements of the witnesses. Therefore, even after taking them on their face value, those incidents, may be instances of disturbing law and order, which can be taken care of by general law and by no stretch of reasoning, such activities can be branded to be disturbing the public order or affecting adversely to the public health.

10. In the matter of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI vs. POLICE COMMISSIONER, SURAT and Ors. as reported in 2000 (1) GLH 393, wherein the Division Bench of this Court after considering the decision of the Apex Court, observed in paras 20 and 21 as under :

"20 The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and Two. Devaki vs. State of Tamil Nadu, AIR 1990 SC 1086. In Piyush

Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly in Two. Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was highlighted. It was also alleged that people were scared and had run helter-skelter. In spite of such allegations, the Supreme Court held that they were not cases of maintenance of public order and hence, no action of preventive detention was uncalled for.

21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention, could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

Again in Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police and Others, 1995 (2) GLR 1268 (Sc), the Supreme Court considered the relevant decisions on point including the decisions in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases."

11. The present set of facts are squarely covered by the above decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki (supra) and therefore the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the petitioner cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

12. In the result, the petition is allowed. The order passed by the Police Commissioner, Rajkot City on 27th February, 2005, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby

quashed and set aside. The detenu Dilip @ Mansukh son of Parsottambhai @ Hasmukh @ Praving Chudasama is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

(J.R. Vora, J.)

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